

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Ho	Team: Squad #3	CCRB Case #: 201504466	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/23/2015 11:05 PM	Location of Incident: New York Avenue and Foster Avenue	Precinct: 67	18 Mo. SOL 11/23/2016	EO SOL 11/23/2016	
Date/Time CV Reported Sun, 05/24/2015 8:59 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/01/2015 1:52 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Palmieri	08390	949442	PBBS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Santoro	01679	949621	PBBS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Palmieri	Abuse: PO Matthew Palmieri frisked § 87(2)(b)	
B.POM Matthew Palmieri	Abuse: PO Matthew Palmieri searched § 87(2)(b)	
C.POM Matthew Palmieri	Abuse: PO Matthew Palmieri frisked § 87(2)(b)	
D.POM Matthew Palmieri	Discourtesy: PO Matthew Palmieri spoke rudely to § 87(2)(b)	
E.POM Matthew Palmieri	Abuse: PO Matthew Palmieri searched the car in which § 87(2)(b) was an occupant.	
F.POM Matthew Palmieri	Abuse: PO Matthew Palmieri issued a summons to § 87(2)(b)	

Case Summary

On May 23, 2015, at 11:05 p.m., PO Matthew Palmieri and PO Michael Santoro stopped a double parked Dodge Charger occupied by § 87(2)(b) and § 87(2)(b) on New York Avenue and Foster Avenue in Brooklyn. During his interaction with the officers, § 87(2)(b) was asked to step out of the vehicle and subsequently frisked and searched by PO Palmieri (**Allegations A and B**). PO Palmieri placed § 87(2)(b) in handcuffs and into the back seat of his RMP. § 87(2)(b) was removed from the vehicle and frisked as well (**Allegation C**). When § 87(2)(b) asked PO Palmieri if he was under arrest, PO Palmieri replied, “No, shut the fuck up” (**Allegation D**). PO Palmieri searched the lunge-able areas of the vehicle prior to releasing § 87(2)(b) with a summons for disorderly conduct [NYPD Document 03] (**Allegations E and F**). PO Palmieri filled out a UF-250 for § 87(2)(b) documenting the frisk and search, and for § 87(2)(b) documenting the frisk [NYPD Document 04].

Mediation, Civil and Criminal Conviction Histories

- Mediation was offered in-person to § 87(2)(b) and he rejected it.
- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of July 2, 2015 with regard to the incident (50 days before the 90-day filing deadline).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) [Board Review 01].
- PO Matthew Palmieri has been a member of the service for 4 years and there are no substantiated CCRB allegations against him.

Potential Issues

PO Palmieri admitted he frisked § 87(2)(b). However, PO Santoro also admitted he frisked § 87(2)(b). Each officer stated that the other did not frisk § 87(2)(b). PO Palmieri completed the UF250 report for § 87(2)(b). In his telephone statement, § 87(2)(b) described the officer who frisked him as the officer who mainly interacted with § 87(2)(b) identified by the investigation as PO Palmieri.

Finding and Recommendations

Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)

Explanation of Subject Officer Identification

PO Matthew Palmieri (tax number 949442) was identified by the summons issued for disorderly conduct to § 87(2)(b) § 87(2)(g)

Recommendations

- **Allegation A – Abuse of Authority: PO Matthew Palmieri frisked § 87(2)(b)**
- **Allegation B – Abuse of Authority: PO Matthew Palmieri searched § 87(2)(b)**

It is undisputed that PO Palmieri frisked and searched § 87(2)(b). § 87(2)(b) testified that upon approaching his vehicle, PO Palmieri immediately asked him to step out of his vehicle. PO Palmieri patted down the front and back of § 87(2)(b)'s body and then asked what § 87(2)(b) had in his pants pockets. § 87(2)(b) replied he had his personal belongings. PO Palmieri searched § 87(2)(b)'s pockets and removed numerous cards. § 87(2)(b) explained he had left his phone in the car and denied having anything else in his pockets.

PO Palmieri and PO Santoro explained that as PO Palmieri spoke with § 87(2)(b) they each observed § 87(2)(b) reach for his right front pants pocket, and continue to reach for it even after being instructed by PO Palmieri not to do so. While § 87(2)(b) was still seated in his vehicle, PO Palmieri observed in § 87(2)(b)'s right pants pocket, a hard elongated object that was four to five inches long and two inches wide. At the time, PO Palmieri believed the object could be a knife. PO Palmieri asked § 87(2)(b) to step out of his vehicle and as he attempted to frisk § 87(2)(b) § 87(2)(b) reached for his right pants pocket to deflect PO Palmieri. PO Palmieri was able to briefly feel the hard object inside § 87(2)(b)'s pocket before his hand was pushed away. PO Palmieri deemed § 87(2)(b) under arrest and handcuffed § 87(2)(b). Once handcuffed, PO Palmieri was able to properly frisk § 87(2)(b) and remove a box cutter from his right front pants pocket. PO Palmieri noted that a crowd had formed during his interaction with § 87(2)(b). PO Palmieri escorted § 87(2)(b) into the back seat of his police vehicle so he could write up a summons for § 87(2)(b). PO Palmieri explained that the box cutter was legal and returned it to § 87(2)(b). PO Palmieri and PO Santoro's memo book entries corroborate their formal statements.

The stop, question and frisk report noted that § 87(2)(b) was frisked due to "furtive movements" he made by reaching for his pants pocket where a suspicious bulge/object was observed [NYPD Document 04]. PO Palmieri noted that § 87(2)(b) was handcuffed because he was reaching for the suspected weapon. A frisk and search revealed a box cutter. PO Palmieri also noted additional circumstances/factors for frisking and search § 87(2)(b) were that the area has a high incidence of reported offenses under investigation and that the time of day/day of the week/season corresponds to reports of criminal activity.

Officers may frisk an individual when they fear for their safety based on the observation that the individual reaches toward their pocket, against the instruction of the officer. People v. Robinson, 278 A.D.2d 808 (4th Dept. 2000) [Board Review 07]. When a frisk reveals an object which could reasonably be mistaken for a weapon, an officer may search the area where the hard object is located. People v. Hill, 569 N.Y.S.2d 227 (1991 – 4th Dept.) [Board Review 09].

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Matthew Palmieri frisked § 87(2)(b)

PO Palmieri denied there being anything suspicious in § 87(2)(b) behavior which prompted him to be frisked. PO Palmieri and PO Santoro explained that § 87(2)(b) was frisked for officers' safety and because a box cutter was recovered from § 87(2)(b)'s person. When asked, PO Palmieri was unable to provide any other basis to support a reasonable belief that § 87(2)(b) was in possession of a weapon.

Conversely, in his memo book and on the stop, question and frisk report, PO Palmieri noted that § 87(2)(b) was frisked due to his nervous behavior and a hard object observed in his pocket which was then determined to be his wallet. PO Palmieri also noted additional circumstances/factors for frisking § 87(2)(b) was that the area has a high incidence of reported offenses under investigation, and that the time of day/day of the week/season corresponds to reports of criminal activity.

Officers who conduct routine traffic stops may exercise their discretion to require occupants to exit a vehicle once a lawful traffic stop has been effected, out of a concern for safety and without particularized suspicion. People v. Isaac, 107 A.D.3d 1055 (2013) [Board Review 12]. Furthermore, officers are constitutionally permitted to perform a “pat down” of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) [Board Review 08]. Such suspicions should be supported by observations or factors, such as a noticeable bulge, or presence in an area with frequent shootings, that contribute to such a particularized suspicion. Isaac.

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Discourtesy: PO Matthew Palmieri spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that when he asked if he was under arrest, PO Palmieri told him, “No, shut the fuck up.”

§ 87(2)(b) heard PO Palmieri tell § 87(2)(b) to “shut the fuck up” and exit the vehicle when § 87(2)(b) did not heed his initial instructions.

PO Palmieri denied making the alleged statement to § 87(2)(b) and only asked § 87(2)(b) once to step out of the vehicle. PO Santoro did not hear PO Palmieri make the alleged statements to § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

- **Allegation E – Abuse of Authority: PO Matthew Palmieri searched the car in which § 87(2)(b) was an occupant.**

While § 87(2)(b) was in police custody, in the back seat of the RMP, PO Palmieri stated he conducted a search of the lunge-able areas of § 87(2)(b)'s vehicle. PO Palmieri described the “lunge-able areas” of the vehicle to be the sides of the front seats, the sides of the seats, under the seats, the center console, glove compartment, and as § 87(2)(b) was found in the back seat – the back seats and the pockets behind the front seats. PO Palmieri explained that in his last arrest, false credit cards were found hidden under the driver’s seat of the vehicle. In this case, PO Palmieri found a Vanilla Visa gift card between the driver’s seat and center console. PO Palmieri took the credit card and other cards of § 87(2)(b) to swipe in a financial scanner.

Under the automobile exception, an officer may search a vehicle incident to a recent occupant’s arrest when the officer has probable cause that the vehicle contains evidence or contraband, and there is a connection between the arrest and the probable cause for the search. People v. Torres, 74 N.Y.2d 224 (1989) [Board Review 11]. An officer may conduct a limited search of a vehicle when there is a substantial likelihood of a weapon being present in the vehicle, thereby posing an articulable and specific threat to the officer’s safety, or if there is probable cause to believe that the vehicle contains contraband or evidence of a crime. People v. Newman, 96 A.D.2d (1st Dept. 2012) [Board Review 06]. When an officer sees an object in plain view that is indicative of a crime, the officer may seize the object without a warrant if: “(1) the police are lawfully in the position from which the object is viewed; (2) the police have lawful access to the object; and (3) the object’s incriminating nature is immediately apparent.” People v. Noriega, 23 Misc. 3d 1124(a) (2009) [Board Review 10].

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

- **Allegation F – Abuse of Authority: PO Matthew Palmieri issued a summons to § 87(2)(b)**

Ultimately, PO Palmieri issued § 87(2)(b) a summons for disorderly conduct. [NYPD Document 03]. On the summons, PO Palmieri described that upon conducting a lawful car stop, he observed § 87(2)(b) reach into his pants pocket. PO Palmieri instructed § 87(2)(b) twice to stop placing his hand into and reaching for his pocket. PO Palmieri stated § 87(2)(b) created a hazardous condition by repeatedly ignoring his warning and instructions upon lawful

orders. Conversely, in his formal statement, PO Palmieri clarified he never observed § 87(2)(b) actually reach into his pocket, and that he only observed § 87(2)(b) place his hand over his pocket. PO Palmieri further explained he used his discretion to not issue § 87(2)(b) a summons for double parking.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: In a public place, he uses abusive or obscene language, or makes and obscene gesture. NYS Criminal Procedure Law 240.20(3) [Board Review 05].

§ 87(2)(g)

§ 87(2)(g)

Pod: 3

Investigator: _____ Rebecca Ho 07/29/15
Signature Print Date

Supervisor: _____

Title/Signature	Print	Date
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Reviewer: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature	Print	Date
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